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LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 202

[Docket No. 2011-8]

Discontinuance of Form CO in Registration Practices

AGENCY: Copyright Office, Library of Congress.

ACTION: Final Rule.

SUMMARY: The United States Copyright Office is amending its regulations in order to discontinue use of the Form CO application as an option for applying for copyright registration, and in order to remove references to CON 1 and CON 2 continuation sheets. The removal of Form CO leaves applicants a choice of filing an application for registration electronically or by using the appropriate printed application form relating to the subject matter of the application. The amendment also removes the references to CON 1 and CON 2 continuation sheets, which were never developed or made available to the public; the regulations instead now refer only to the continuation sheets currently available for applicants filing paper applications and makes other housekeeping amendments relating to applications for copyright registration.

EFFECTIVE DATE: July 1, 2012.

FOR FURTHER INFORMATION CONTACT: Tanya Sandros, Deputy General Counsel, Copyright Office, GC/I&R, P.O. Box 70400, Washington, DC 20024. *Telephone:* (202) 707-8380. *Telefax:* (202) 707-8366. All prior **Federal Register** notices and comments in this docket are available at <http://www.copyright.gov/docs/formco/>.

SUPPLEMENTARY INFORMATION:

Background

In 2007, the Copyright Office began an extensive business process reengineering initiative that had an impact on a variety of registration-related activities. *See* 72 FR 36883 (July 6, 2007). As part of this initiative, the Office promulgated interim regulations regarding how the public submits and the Office processes copyright applications. In these interim regulations, the Office announced four ways to file an application for registration. At the time, the Office used the term “Form CO” generically in its regulations to cover all four approaches to registration. With the implementation of the new electronic registration practices, however, Form CO was used to describe a specific form that is filled out on a computer and that uses barcodes to capture the information entered by the person filling out the form. After completing the form, the applicant prints it out and submits the paper form to the Copyright Office. This newer incarnation of Form CO, first made available in 2008, was intended to simplify the application process and replace the traditional paper Forms TX, VA, PA, SR, and SE. *See* 72 FR at 36885; 37 CFR 202.3(b)(2)(ii). However, following the implementation of reengineering, it eventually became clear (for reasons discussed below) that Form CO did not live up to its expectations because many users of the form made entries on the form that were not captured in the barcodes and therefore were not carried over into the Office’s registration records and because of problems with printing the forms.

The regulations promulgated in 2007 also referred to two additional continuation sheets, CON 1 and CON 2, which the Office intended to be used in connection with Form CO and which would have allowed applicants to provide additional information that would not fit within the barcodes to be generated by Form CO. *See* 72 FR at 36886. However, the Office never developed these new continuation sheets and continued to accept the traditional Form CON for the provision of additional information. *See* <http://www.copyright.gov/forms/formcon.pdf>.

On September 30, 2011, the Copyright Office published a notice of proposed rulemaking and request for comments in regard to Form CO, CON 1, and CON 2. 76 FR 60774. The Office proposed eliminating Form CO as an application option and removing references to CON 1 and CON 2. Form CO, the Office pointed out, is not widely used, but it does present a disproportionate number of problems for the Office. As is explained in greater detail in the notice of proposed rulemaking, when applicants find they need to amend information on Form CO after preparing and printing the form but before submitting it, they frequently make changes by writing directly on the form rather than redoing or revising the form correctly online.. As a result, additional time and resources are required for the Office to manually input the amended information into the system, or it may be missed in the ingestion process altogether. Either way, the added time required to detect and correct these problems defeats all the efficiencies promised by this technology.

Nor is human error the only concern. The notice of proposed rulemaking also noted that the use of barcodes presents other unique problems associated with the technology. Barcodes can be compromised and fail to function properly, e.g., due to distortion in the printing of the application or due to tears in the portion of the page on which the barcode appears. In such cases the information on a Form CO application must be manually entered into the online registration system.

In addition to proposing the elimination of Form CO, the Office proposed amending its regulations to remove references to continuation sheets for use with Form CO – CON 1 and CON 2 – because the Copyright Office never created these specialized forms.

Comments

The Office received two comments in response to its notice of proposed rulemaking one in support of the proposal to eliminate Form CO and the other in support of maintaining it. Author Services, Inc. writing in support of the Office’s proposal to eliminate Form CO, stated

that its use is “likely to cause errors and lengthen the examination process.” Attorney Joshua Kaufman, on the other hand, opposed elimination of Form CO. He argued that the electronic filing system is “clunky, cumbersome and takes a great deal of time,” and stated that the system does not provide a copy of the application suitable for the applicant’s file and for subsequent review. The alternative to electronic filing – using forms specific to various types of works – was also insufficient, maintained Mr. Kaufman, because these forms take over a year to process and are more expensive than electronic registration.

Discussion

Form CO represents a very small percentage of applications received by the Office – approximately two percent of applications submitted since January 2011 have been submitted on Form CO. Eliminating Form CO will simplify the registration process for the Copyright Office and leave applicants with two options to register their works. They may submit applications for registration electronically or they may use the paper forms (Forms TX, PA, VA, SR, and SE, or the Short Forms TX, PA, VA or SE if appropriate). Applications submitted electronically are less expensive and this option allows for a quicker turnaround time. Currently, these applications are processed on average in three months. The Office has also reduced the time it takes to process a paper application, completing the process on average in 10 months. However, the key benefit gained in eliminating Form CO is the savings in resources which the Office now spends on reviewing each Form CO to ensure the accuracy of the Form CO information embedded in the barcode.

While Mr. Kaufman’s lone voice in favor of maintaining Form CO does not provide a strong reason for the Office to continue to offer this option for registration, he does raise three issues that the Office, for the sake of clarity, wishes to address. First, the Office is aware that improvements are needed to make the online registration system more user-friendly and less time-consuming and, for that reason, the Office is committed to making it as easy and efficient as

possible. To that end, the Register has made the evaluation of technical upgrades to the current electronic deposit system a major priority over the next 18 months, a process that includes significant involvement from remitters and technical experts. See *Priorities and Special Projects of the United States Copyright Office* (<http://www.copyright.gov/docs/priorities.pdf>) at 13. Also, contrary to Mr. Kaufman's assertion, a reviewable copy of an electronic application is available to applicants after successful fee payment. Using the "My Applications" link, an applicant can view and print a copy of the certificate preview displaying all the information entered by the applicant under the corresponding headings. Finally, regarding the use of paper forms instead of electronic registration, the Office notes that while paper registration is more expensive and does take longer, the processing time for these applications has been steadily declining. As noted above, the current average processing time for a paper application is 10 months, not a year or longer.

For the reasons set forth above and because there is little support for maintaining Form CO, the Office has concluded that the use of Form CO should be discontinued. In addition, because the Office is discontinuing Form CO and never created the CON 1 and CON 2 forms that were to be used with Form CO, the Office is amending its regulations to remove references to the CON 1 and CON 2 forms. Note, however, that those applicants using paper applications may continue to use existing Form CON. See <http://www.copyright.gov/forms/formcon.pdf>. As a related point of clarity, the Office is also amending §§ 202.3(b)(10)(iv)(D) and (v) of the regulations, relating to group registration of published photographs, to clarify that the references therein to "special continuation sheet" are references to Form DR/PPh/CON.

Effective date

Beginning July 1, 2012, the Copyright Office will no longer accept Form CO applications for registration. Upon receipt of a Form CO on or after July 1, 2012, the Office will notify the remitter that it has received an incomplete submission for registration and that the remitter may complete the submission by providing a completed "Form TX"; "Form PA"; "Form VA"; "Form

SR”; “Form SE,” or the short form versions of Forms TX, PA, VA or SE as appropriate, along with any applicable short fee. The effective date of registration for the claim will be the date the Office receives a complete submission, including an acceptable form, the appropriate fee and the deposit. Should the remitter fail to provide the correct form and additional fee within 30 days, the Office will close the claim and retain the initial fee to cover the administrative costs of processing the incomplete submission.

Housekeeping amendments

The Office also takes this opportunity to make three additional amendments to its regulations. First, the Office is amending §201.3(c) to clarify that the \$35 fee for an electronic filing listed in item 2 applies only to the electronic submission of applications for group registration of photographs and for registration of automated databases that predominantly consist of photographs and updates to these databases. *See* 76 FR 4072 (January 24, 2011) and 76 FR 5106 (January 28, 2011). While the Office had anticipated providing an online option for group registration of contributions to periodicals, this option still requires further testing and evaluation and is not currently offered.

Second, the Office is amending §202.2(b)(1) which incorrectly identifies the appropriate copyright notice on a sound recording as a “©.” The technical amendment corrects this error and identifies the correct notice for a sound recording as a “□.”

Finally, the Office is amending §202.3(b)(2)(ii) to include specific references to the short forms of several standard applications for registration and to indicate the circumstances under which these forms are used today. The conditions for use of the short forms are explained in the instructions accompanying Short Form PA, Short Form TX, Short Form VA, and Short Form SE. Thus, the proposed amendment merely clarifies the longstanding practice of the Office to accept short form applications, provided that the claim meets the conditions outlined in the instructions to the forms.

List of Subjects

37 CFR Part 201

Copyright, General Provisions.

37 CFR Part 202

Copyright, Registration of claims to registration.

Final Regulations

In consideration of the foregoing, the Copyright Office amends parts 201 and 202 of 37 CFR, as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 201.3 [Amended]

2. Amend § 201.3(c) as follows:

- a. By removing the line beginning “Form-D barcode application properly completed online) . . .” and the phrase “; and Form CO without barcodes or incomplete information, or information added after printing (paper filing)” from item (1) of the fee chart titled “Registration, Recordation and Related Services.”

- b. By adding “of automated databases that predominantly consist of photographs and updates thereto or group registration of published photographs” after “electronic filing” in item (2) of the fee chart titled “Registration, Recordation and Related Services.”

**PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO
COPYRIGHT**

3. The authority citation for part 202 reads as follows:

Authority: 17 U.S.C. 409 and 702.

§ 202.2 [Amended]

4. Amend § 202.2(b)(1) by removing “©” after “in the case of a sound recording, the symbol” and adding “□” in its place.

5. Amend § 202.3 by:

a. Revising paragraph (b)(2) and (b)(3).

b. In paragraphs (b)(10)(iv)(D) and (b)(10)(v) by adding “(Form GR/PPh/CON)” after the phrase “special continuation sheet” wherever it appears.

c. In paragraph (c)(2) introductory text by removing “, electronically or in printed form, on the appropriate form prescribed by the Register of Copyrights under” and by adding “by using one of the methods set forth in” in its place.

- d. By redesignating footnotes 3 through 6 as footnotes 2 through 5.

§ 202.3 Registration of copyright.

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(b) * * *

(2) *Submission of application for registration.* For purposes of registration, an applicant may submit an application for registration of individual works and certain groups of works electronically through the Copyright Office’s website, or by using the printed forms prescribed by the Register of Copyrights.

(i) An applicant may submit an application electronically through the Copyright Office website [www.copyright.gov]. An online submission requires a payment of the application fee

through an electronic fund transfer, credit or debit card, or through a Copyright Office deposit account. Deposit materials in support of the online application may be submitted electronically in a digital format along with the application and payment, or deposit materials in physically tangible formats may be separately mailed to the Copyright Office, using a mailing label generated during the online registration process, or

(ii) (A) Alternatively, an applicant may submit an application on one of the printed forms prescribed by the Register of Copyrights. Each printed form corresponds to a class set forth in paragraph (b)(1) of this section and is so designated (“Form TX”; “Short Form TX”, “Form PA”; “Short Form PA”, “Form VA”; “Short Form VA”, “Form SR”; “Form SE”; “Short Form SE”, and “Form SE/Group”).

(B) Short form applications may only be used if certain conditions are met. Short Form TX, Short Form PA, and Short Form VA may be used only to register a single work in a case when a living author who is the only author of his or her work is the sole owner of the copyright in the work, the work is not a compilation or derivative work containing a substantial amount of previously published or registered material, and the work is not a work made for hire. Short Form SE may be used only if the claim is in a collective work, the work is essentially an all-new collective work or issue, the author is a citizen or domiciliary of the United States, the work is a work for hire, the author(s) and claimant(s) are the same person(s) or organization(s), and the work was first published in the United States.

(C) Printed form applications should be submitted in the class most appropriate to the nature of the authorship in which copyright is claimed. In the case of contributions to collective works, applications should be submitted in the class representing the copyrightable authorship in the contribution. In the case of derivative works, applications should be submitted in the class most appropriately representing the copyrightable authorship involved in recasting, transforming, adapting, or otherwise modifying the preexisting work. In cases where a work contains elements of authorship in which copyright is claimed which fall into two or more classes, the application

should be submitted in the class most appropriate to the type of authorship that predominates in the work as a whole. However, in any case where registration is sought for a work consisting of or including a sound recording in which copyright is claimed, the application shall be submitted on Form SR.

(D) Copies of the printed forms are available on the Copyright Office's website [www.copyright.gov] and upon request to the Copyright Public Information Office, Library of Congress. Printed form applications may be completed and submitted by completing a printed version or using a PDF version of the applicable Copyright Office application form and mailing it together with the other required elements, *i.e.*, physically tangible deposit copies and/or materials, and the required filing fee, all elements being placed in the same package and sent by mail or hand-delivered to the Copyright Office.

(3) *Continuation sheets.* A continuation sheet (Form CON) is appropriate only in the case when a printed form application is used and where additional space is needed by the applicant to provide all relevant information concerning a claim to copyright. An application may include more than one continuation sheet, subject to the limitations in paragraph (b)(10)(v) of this section.

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Dated: March 12, 2012

Maria A. Pallante
Register of Copyrights

March 19, 2012

Approved by:

James H. Billington

The Librarian of Congress

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